IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 598 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

HH GOSWAMI - Petitioner(s)
Versus
COMMISSIONER OF HEALTH AND MEDICAL SERVICES - Respondent(s)

==========

Appearance :
MRS SANGEETA N PAHWA for Petitioner(s) : 1,
MS REETA CHANDARANA, AGP for Respondent(s) : 1,
==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/03/2006

ORAL JUDGMENT

1.In the present petition, the petitioner has challenged an order dated 12-08-1993 by which the services of the petitioner came to be terminated. Pursuant to the said

order dated 12-08-1993, the petitioner was actually relieved from services by communication dated 13-08-1993 which has also been impugned by the petitioner in the present petition.

2. Short facts leading to the present petition are that the petitioner was appointed to the post of driver in the pay scale of Rs.950-1500 by respondents by an order dated 20-08-1992. From the order itself, it is clear that appointment of the petitioner was purely temporary and on probation for a period of one year. Condition no.1 of the appointment order provided that the appointment of the petitioner is ad hoc and same may be terminated at any time. Condition no.2 of the appointment further provided that the petitioner will be in probation for a period of one year and upon satisfactory conclusion of the probation, he will be considered for regular appointment. Condition no.3 of the appointment further stated that if during the period of probation, service of the petitioner is not found to be satisfactory, the service is liable to be terminated without any notice. If found necessary, period of probation could be extended. It was on the basis of these terms and conditions that the petitioner

came to be appointed as Driver.

2.1 It appears that a criminal complaint was filed against the petitioner on 12-04-1993 involving offences punishable under the provisions of Bombay Prohibition Act. Such complaint was filed before Thasra Police Station and was registered as CR No.88/1993. By an order dated 12-08-1993, the Additional Director of Health Medical Services and Medical Education terminated the services of the petitioner with immediate effect. The order records that decision is based on the direction of the commissioner issued on 31-07-1993. This termination order was conveyed to the petitioner by Superintendent of Health Centre, Thasra under whom the petitioner was discharging his duties by communication dated 13-08-1993. Accordingly, the service of the petitioner came to an end with effect from 13-08-1993.

3. The petitioner appealed against his termination before Gujarat Civil Services Tribunal, Gandhinagar. The Tribunal however, found that order of termination is simpliciter termination and calls for no interference. The petitioner has therefore, filed the present

petition challenging his termination by the respondents.

4.It is the case of the petitioner that he was regularly selected through a regular selection process. He was appointed on probation for a period of one year. During the period of probation, the petitioner had discharged his duties to the satisfaction of the employer. He has given no cause of complaint in his work performance.

4.1 It is the case of the petitioner that he had filed a criminal case against his co-employee on 12-04-1993. In the complaint he alleged that his co-employee Shri Brahmbhatt had committed offences punishable under the provisions of Bombay Prohibition Act and Indian Penal Code. Such complaint was filed before Thasra Police Station and was registered as CR Case no. 87/1993. Only as a counter blast, Shri Brahmbhatt shortly after the petitioner lodged his complaint, filed false complaint against the petitioner before Thasra Police Station also alleging that the petitioner had breached the provisions of Bombay Prohibition Act. The learned advocate Ms. Pahwa for the petitioner submitted that service record of the

petitioner was good. That there was no complaint against the petitioner during his service tenure. That the petitioner received no adverse remarks, memo or charge-sheet from the employer. In fact the immediate superior under whom the petitioner was working, issued a certificate dated 16-08-1993 stating that behaviour and character of the petitioner are found to be good and that during his service tenure, he has not been reprimanded. On the basis of the said Certificate, it is urged before this Court that there was no material before the authorities to terminate the services of the petitioner even while under probation. It was strongly urged that respondents came to the conclusion that the services of the petitioner was required to be terminated solely on the basis of the criminal complaint filed against him. It was pointed out that eventually the Criminal Court by an order dated 10-11-1993 acquitted the petitioner of the charges levelled against him. It is therefore, contended that order of termination deserves to be set aside.

5. On the other hand the respondents have filed affidavit in reply and opposed the petition. It is stated that the services of the petitioner have been terminated due

to unsatisfactory work before completion of probation period. It is stated that while under probation, the petitioner should have performed his duties satisfactorily. It is further stated that services of the petitioner have been terminated on account of unsatisfactory performance during the course of probation period.

5.1 On the basis of affidavit in reply, learned AGP Ms. Reeta Chandarana submitted before the Court that service of the petitioner came to be terminated since during the period of probation, his service was not found to be satisfactory. It is contended that probationer has no right to a post. Since before confirmation the employer decided to terminate the service of the petitioner by termination order which is simpliciter in nature, this Court should not interfere with such a decision of the employer.

6. Having heard the learned advocates appearing for the parties and having perused the material on record, it appears that the petitioner was appointed by an order dated 20-08-1992 to the post of driver after regular selection process. His appointment was on probation for

a period of one year. During the period of probation, the respondents passed the impugned order of his termination.

7. It can also be seen that in the affidavit in reply, it is stated that respondents found that the performance of the petitioner during the probationary period was not satisfactory. On the other hand, the case of the petitioner all through out being that the sole basis for his termination was his involvement in a false criminal case which other-wise also resulted into his acquittal. To examine the matter at some length, I had summoned the original file of the Government concerning the petitioner's service. Having gone through the material contained in the said file, I find that on 13-04-1993, the Superintendent of the Health Centre, Thasra wrote to the Divisional Deputy Director indicating that on 12-04-1993, a police complaint has been filed against the petitioner for having been found in drunken condition. In turn, the Regional Deputy Director wrote a letter on 13-04-1993 to the Commissioner indicating the said fact and requesting for taking appropriate action. Thereafter with respect to the present issue there is a communication from the

Additional Director dated 9/12/08/1993 ordering termination of the petitioner. This in turn was communicated by the Superintendent to the petitioner vide his communication dated 13-08-1993.

7.1 It can thus be seen that except for the above criminal complaint filed against the petitioner, there is no other material on record to suggest that service of the petitioner was not satisfactory. There is no adverse remarks communicated or un-communicated against the petitioner regarding his unsatisfactory service. There is no memo, warning or charge-sheet issued against the petitioner. There is no noting of any of the officers in the file that the work of the petitioner is not found to be satisfactory. In absence of the criminal complaint, therefore, there is absolutely no material justifying the conclusions of the respondents that service of the petitioner was not satisfactory. It is true that as a probationer, the petitioner had limited right to seek confirmation on the post. It is equally true that while under the probation, it was open for the employer to terminate his service by an order of termination simpliciter, if the employer bona fide and on available material on

record came to the conclusion that service performance of the petitioner was not satisfactory. However, such satisfaction cannot be arrived at on mere whim or ipsy dixit of the employer. There has to be some material on record to substantiate such a conclusion. If one eliminates the criminal complaint filed against the petitioner, there is not an iota of material on record to suggest that the performance of the petitioner during his service tenure was not satisfactory. The conclusions of the respondents therefore, would be without any basis. It would therefore, be apparent that sole basis on which the respondents came to the conclusion that service of the petitioner is required to be terminated, was the presence of the criminal complaint.

8. It would therefore, be necessary to examine whether in facts of the present case, the petitioner could have been terminated on account of such a criminal complaint. It may be noted that the criminal complaint was filed against the petitioner by his co-employee Shri Brahmbhatt within hours of petitioner filing a similar complaint against Shri Brahmbhatt before Thasra Police Station. Eventually, the petitioner was

acquitted of the charges levelled against him. Though it is not meant to suggest that involvement in prohibition case is not a serious issue, one cannot lose sight of the fact that such complaint can be easily filed but is difficult to prove. In any case, if the respondents had examined the complaint against the petitioner and found that the allegations against the petitioner are serious and that there is some material against the petitioner, decision of the respondents to terminate the petitioner while in probation may perhaps have been justified. However, in the present case, respondents mechanically relied on mere filing of the criminal complaint and decided to terminate the service of the petitioner while under probation. In facts of the present case following salient features cannot be lose sight of.

1)Criminal case against the petitioner was preceded by a complaint by the petitioner against the complainant who lodged such a case against the petitioner.

2)The petitioner was eventually acquitted of the charges levelled against him shortly after his termination.

3)The respondents did not go into the nature of allegations made against the petitioner or examined the material on record before deciding to terminate his service.

4)Other than the above criminal complaint, there was no other evidence on record to suggest that service of the petitioner was not satisfactory.

9.The immediate superior of the petitioner under whom the petitioner was discharging his duties had in fact indicated that the behaviour and character of the petitioner is found to be good and during his service, there has been no complaint against him. It is true that higher authorities had called for explanation of the Superintendent of Health Centre, Thasra, who had given such a Certificate in favour of the petitioner. The same cannot take away the sting out of the stand of his immediate superior that there was no adverse material against the petitioner during his service carrier. Under the circumstances, in facts of the present case, I find that respondents erred in passing the impugned order. Both sides have relied on the decision of the Hon'ble Supreme Court to point out as

to when an order of termination of a probationer can be said to be founded on allegations of misconduct and when same can be said to be based on such allegations. In my view in the present case, it is not a question of allegation of misconduct which is either the base or foundation of order of termination. The real crux of the matter is whether the respondents could have solely on the basis of filing of the criminal case against the petitioner, terminated his service by coming to the conclusion that his service performance was not satisfactory. Considering the totality of the facts and circumstances of the case, having perused the material on record and having taken into consideration the salient features of the case as narrated here-in-above, in facts and circumstances of the case, I find that respondents erred in passing the impugned order. The same is therefore quashed and set aside. The petitioner has discharged his duties only for one year when his service came to be terminated. Therefore, as a consequence of quashing of the order of termination, the petitioner shall be reinstated in service with continuity, however, without any back-wages. It will be open for the respondents to asses the performance of the petitioner for a reasonable period of time. The

respondents shall thereafter, consider the question of confirmation of the petitioner in service.

10.With these directions the petition is disposed of as having been allowed. Rule made absolute with no order as to costs. The above direction be complied with within a period of four weeks from the date of receipt of a copy of this order.

(Akil Kureshi,J.)

(raghu)